

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)
(Table of Allotments)
FM Broadcast Stations

Atlantic and Audubon, Iowa

) MM Docket No. 95-124
) RM-8573
)
)
)
)

DOCKET FILE COPY ORIGINAL

RECEIVED

NOV 6 1995

To: Chief, Allocations Branch
Policy and Rules Division

REPLY TO OPPOSITION TO MOTION TO ACCEPT RESPONSIVE PLEADING

Meredith Communications, L.C. ("Meredith"), by its counsel and pursuant to §1.45 of the Commission's Rules, hereby submits its Reply to the "Opposition to Motion to Accept Responsive Pleading" filed by Wireless Communications Corp. on October 25, 1995, in the above-captioned rule making proceeding.¹ In support whereof, the following is shown:

In its Comments and Counterproposal filed on September 18, 1995, Meredith requested the Commission to deny Wireless' proposed allotment of Channel 239C3 to Atlantic, Iowa, and, for the Commission to modify the community of license of Meredith's FM station, KSOM, from Audubon, Iowa, to the hyphenated community of license of Atlantic-Audubon, Iowa. In its Reply Comments, Wireless argues that Meredith has not been the licensee of KSOM(FM) for at least a year and that Meredith was required to provide "the notification required by the Commission." Reply Comments at footnote 2 citing Modification

¹ This Reply is timely-filed pursuant to §1.45 of the Commission's Rules within five days of the filing of Wireless' Opposition (including three additional days for mailing time and not counting Commission "holidays") or by November 6, 1995.

of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7097 (1990)("New Community of License").

On October 10, 1995, Meredith filed a "Response To Reply Comments of Wireless Communications Corp." in order to demonstrate that the certification requirement cited by Wireless was not applicable in this case. The FCC requires parties seeking a change of community of license for a new FM or TV station, that have been a permittee or licensee for less than one year, to state in their petitions for rulemaking or counterproposals whether they obtained the permit in a comparative hearing and, if so, whether they sought a preference for local residence and/or daytimer preference. See, New Community of License, 5 FCC Rcd at 7097, ¶21. Since Meredith did not propose to change the community of license of KSOM(FM), but proposed that the market be hyphenated to include Atlantic, Iowa, the certification requirement was not required in Meredith's view.

Together with his Response, Meredith filed a "Motion to Accept Responsive Pleading." In its Motion, Meredith argued that it should be permitted to file an additional Response to Wireless' Reply Comments. Its purpose was to dispute Wireless' erroneous belief that a certification was required in this case.

In its Opposition, Wireless contends that Meredith should not be permitted to file an additional pleading in this proceeding. Wireless argues that it merely raised a procedural argument against Meredith's Counterproposal and that such an argument was properly raised in Wireless's Reply Comments. However, the issue is not when Wireless chose to raise its procedural argument but rather whether such an argument was valid. Wireless's procedural argument was clearly erroneous and the Commission should permit Meredith the opportunity to address this limited issue. Meredith's sole purpose for filing its Response was to clarify

the record in this proceeding and to permit the Commission to issue a fully-informed and accurate decision. As such, Meredith's Motion should be granted and its Response should be accepted for consideration in this proceeding.

Respectfully submitted,

MEREDITH COMMUNICATIONS, L.C.

A handwritten signature in black ink, appearing to read "Gary S. Smithwick", written over a horizontal line.

By: _____

Gary S. Smithwick
Shaun A. Maher

Its Attorneys

SMITHWICK & BELENDIUK, P.C.

1990 M Street, N.W.

Suite 510

Washington, D.C. 20036

(202) 785-2800

November 6, 1995

dl\ATLANTIC\A\REPLY

CERTIFICATE OF SERVICE

I, Denise Felice, a secretary in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 6th day of November, 1995, copies of the foregoing were sent by first class mail, postage prepaid, to the following:

Ms. Leslie K. Shapiro (*)
Allocations Branch
Mass Media Bureau, FCC
2000 M Street, N.W.
5th Floor
Washington, DC 20554

Barry A. Friedman, Esquire
Semmes, Bowen & Semmes
Suite 900
1025 Connecticut Avenue, N.W.
Washington, DC 20036
Counsel for Wireless Communications Corp.

(*): By Hand Delivery


Denise Felice